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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195223

DATE: March 4, 1980

~~CLAIMED~~

MATTER OF: Daniel Blank - Backpay for Extended Detail]

DIGEST: Employee claims to have performed the duties of a higher-level position from July 30, 1973 to March 3, 1978. The agency granted him a retroactive temporary promotion to February 29, 1976, the date the position was officially cancelled. Employee's claim for backpay from February 29, 1976 to March 3, 1978, is denied since there can be no temporary promotion to a position which is not classified. Question of whether cancellation of the position and the resulting termination of the retroactive temporary promotion constituted an adverse action is for determination by the Merit Systems Protection Board.

This decision concerns a request for reconsideration of the claim of Daniel Blank for a retroactive temporary promotion for the period February 29, 1976 through March 3, 1978. Mr. Blank's claim was disallowed by our Claims Division by settlement dated April 17, 1979.

Mr. Blank, a GS-12 employee of the Department of Labor, was detailed to a GS-13 position on July 30, 1973, and he claims that he continued to perform the duties of that position until March 3, 1978. He requested a retroactive temporary promotion for that period, relying upon our decision in David L. Caldwell and Everett Turner, 55 Comp. Gen. 539 (1975) and related cases. The agency granted him a retroactive temporary promotion for the period November 27, 1973, the 121st day of his detail, to February 19, 1976, the date the higher-level position occupied by Mr. Blank was officially cancelled. Mr. Blank now seeks a retroactive temporary promotion for the period February 29, 1976 to March 3, 1978. He argues that he had no notice or knowledge of the fact that the position to which he had been detailed had been abolished on February 29, 1976, and that he continued to perform the duties of the higher-level position until March 3, 1978.

As a general rule, an employee is entitled only to the salary of the position to which he is officially appointed regardless of the duties he performed. An exception has been made where an employee has been detailed for more than 120 days without CSC approval to a classified position in a higher grade to which he could have been

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promoted. Charles E. Wassner, B-187249, June 17, 1977, and cases cited therein. The detail must have been to a position which is classified at a higher grade since there can be no promotion to a position which has not been classified. Hubert J. Buteau, B-187287, May 13, 1977; Lee B. Tolbert, B-193457, August 24, 1979.

In the case before us, however, we are faced with an unusual twist on the above-stated rule. Here, the agency accepted the employee's claim that he had been detailed to a higher-graded position and granted him a retroactive temporary promotion for a period in excess of 2 years. The agency considered that the detail had ended on February 29, 1976, when the position was cancelled as part of a reorganization. The employee contends that he continued to perform the same duties and responsibilities for another 2 years and that he had no knowledge that the position had been cancelled. He argues that the decisions of this Office on unclassified positions deal only with the initial detail and do not apply where the status of a position is changed during a detail.

Unfortunately, for Mr. Blank, we have issued several decisions involving positions which were changed during the period of a detail. In Katherine Crump-Wiesner, B-190335, February 14, 1978, the claimant was detailed to a higher-level position which was cancelled shortly thereafter and later reestablished. Applying the rule that there can be no promotion to an unclassified position, we held that the claimant had no entitlement to a retroactive temporary promotion during the period when the position had been cancelled. Similarly, in Carl R. Lystad, B-194121, October 29, 1979, we decided that the claimant's right to a retroactive temporary promotion terminated when the position was downgraded. As to his claim that the downgrading had been improper, we said that that was a classification matter which we had no authority to resolve.

The former Civil Service Commission also has taken the position that a retroactive temporary promotion does not in itself create an entitlement to continued temporary promotion unless the situation meets the criteria for use of a temporary promotion and the employee is selected for temporary promotion. FPM Bulletin 752-6, September 16, 1977.

Thus, the fact that Mr. Blank's detail position was classified at a higher grade when the detail began, and was only subsequently cancelled, is not determinative. Accordingly, the remedy of a retroactive temporary promotion for the period February 29, 1976 through

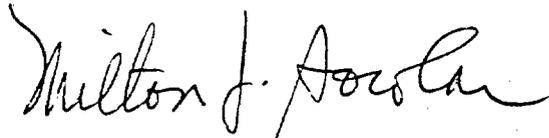
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March 3, 1978, is not available to Mr. Blank and the determination of our Claims Division is hereby sustained.

Mr. Blank argues in the alternative that cancellation of the higher-level position which he occupied could constitute a reduction-in-grade and, thus, entitle him to the protections of an adverse action proceeding. Informal discussions with the Office of Personnel Management (OPM) suggest that there has been no definitive ruling on this issue as it arises in the unique circumstances of Mr. Blank's case.

It is clear that the termination of a temporary promotion and return to the grade level previously occupied is an adverse action where the temporary promotion exceeds two years. 44 Fed Reg. 47033 (August 10, 1979), amending 5 C.F.R. § 752.401(c). It is also clear that although it may exceed two years, termination of a retroactive temporary promotion is not usually considered an adverse action because the employee has received the remedy of backpay and there is no entitlement to continue in the position. FPM Bulletin 752-6, September 16, 1977.

Mr. Blank's case is not clearly within either category. His temporary promotion exceeded two years, but he did not receive a retroactive temporary promotion for the entire period, and claims to have continued to serve in the higher-level position after termination of the temporary promotion. Thus, whether cancellation of the higher-level position occupied by Mr. Blank, and the resulting termination of his temporary promotion, constituted an adverse action is not apparent from the information available. A definitive ruling on this issue can only be obtained from the Merit Systems Protection Board, assuming the matter is otherwise appropriate for review.



For the Comptroller General
of the United States